



VOPA ADVISOR

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MISSION OF VOPA

Through zealous and effective advocacy and legal representation to:

- ◇ *Protect and advance the legal, human, and civil rights of persons with disabilities;*
- ◇ *Combat and prevent abuse, neglect and discrimination;*
- ◇ *Promote independence, choice and self determination by persons with disabilities in the Commonwealth.*

MESSAGE FROM THE EXECUTIVE DIRECTOR

Colleen Miller, Esq.

These are exciting days at the Virginia Office for Protection and Advocacy. As you will read in the pages that follow, we have restructured the organization in an effort to provide more effective advocacy for people with disabilities in Virginia. Likewise, as you will see, we have developed very focused goals for our work, in the hope that a tighter focus will allow us to concentrate our work most efficiently. As the General Assembly approaches, we are gearing up to be a voice for the community on issues that concern people with disabilities. We are committed to being an ever improving advocacy organization.

We cannot do this alone, however. We need the support and guidance of the entire disability community to help us under-

stand where the most vulnerable and least understood needs of the community are. That is where our advisory councils come in. We have two councils - one specifically dedicated to the needs of people with mental illness and one for the needs of the disability community at large. Our advisory councils meet quarterly to give us feedback from the community. The councils advise us on our policies and priorities with the goal of assuring that people with disabilities in this Commonwealth are free from abuse, neglect and rights violations. It is a huge task, as you might imagine.

If you are a person with a disability, or family member or friend of a person with a disability,

we hope you will consider applying to join one of our advisory councils. You can learn more about them on our website at www.vopa.state.va.us. Better yet, come to one of our meetings and see for yourself how the councils operate. Although the councils typically meet in Charlottesville, both councils will meet next in Richmond (exact location not yet determined). The Disability Advisory Council will meet on January 29 and the PAIMI Advisory Council (for people with mental illness) meets on February 12.

Won't you consider joining us as we strive to make Virginia a place where people with disabilities are welcomed in all aspects of community life?

GENERAL ASSEMBLY 2004 Sherry Confer, Policy Director

The 2004 General Assembly session begins January 14, 2004. VOPA will be involved in tracking and monitoring legislation that may impact disability rights and/or ser-

vices for individuals with disabilities.

Please see our website for timely information on actions and legislative initiatives that ad-

dress the needs of individuals with disabilities.



VOPA REORGANIZATION Gary L. Conover, Esq.

On October 1, 2003, the Office was reorganized to assure more prompt, effective and efficient services. Prior to this date, the Office was organized along program lines according to Federal grants including, for example, the Developmental Disabilities grant, the Protection and Advocacy for Individuals with Mental Illness grant and the Assistive Technology grant.

After a careful evaluation of the authorizing statutes, two legal services units were created - one dedicated to serving clients in institutions and one dedicated to serving clients in the community. The In-

stitutions Unit will focus principally on investigations of abuse and neglect, assuring more prompt and effective completion of investigations. The Communities Unit will bring diverse resources together to meet the needs of people with disabilities living in the community.

An additional and significant part of the new organizational structure is the Resource Advocacy Unit, which will screen all requests for services and will be trained and equipped to respond to callers whose complaint, issue or concern is outside of the Of-

fice's annual goals, focus areas and objectives. The Unit's responsibilities will also include strategic outreach, development of targeted resources and evaluating potential cases for the legal services units.



DANVILLE-PITTSYLVANIA COMMUNITY SERVICES DISMISSES ITS OWN LAWSUIT VOPA HAS ISSUED A REPORT FINDING NEGLECT

Danville-Pittsylvania Community Services (DPCS) asked the Circuit Court for the City of Danville to dismiss the lawsuit that it had filed seeking to prevent the Virginia Office for Protection and Advocacy (VOPA) from issuing a report finding that DPCS had committed severe and system-wide neglect, resulting in a consumer being hospitalized. VOPA has issued its report, and it can be viewed on its website at www.vopa.state.va.us.

The lawsuit was filed after VOPA conducted an investigation of the way DPCS treated a consumer. VOPA found that DPCS neglected the consumer, resulting in the consumer's hospitalization. VOPA then forwarded a draft report to DPCS to give it an opportunity to respond and offered to publish DPCS's response. Instead of responding to the report, DPCS first demanded that VOPA not publish the report, and threatened, if

VOPA did publish, to make negative statements about the VOPA staff person who conducted the investigation. When VOPA stated its intention to publish the report, DPCS filed its lawsuit. In the lawsuit, DPCS admitted that VOPA's report had found that DPCS neglected the consumer. DPCS also unlawfully disclosed the consumer's name and made numerous false or meritless statements about VOPA, its staff and the investigation. VOPA responded by requesting that the United States District Court for the Western District of Virginia take jurisdiction over the case. VOPA then filed a Motion to Dismiss DPCS's lawsuit. The Federal District Court, on August 27, 2003, declined to hear the case and remanded it back to the State Circuit Court for the City of Danville. Rather than attempt to support its case in the court it originally chose, DPCS asked the Circuit Court to dismiss its case, which it did.

"It's sad that, in difficult budgetary times, DPCS would spend thousands of dollars on a meritless lawsuit when that money could have been better spent ensuring that its consumers do not suffer the same fate as the one involved in this case," stated VOPA's Executive Director, V. Colleen Miller. "DPCS's actions in dismissing its case, without providing any evidence in support of its claims, shows that it knows now, and probably knew all along, that its case was unfounded and intended only to delay us from exposing its neglect. DPCS failed...."

VOPA WINS CIVIL RIGHTS VICTORY AT DUE PROCESS HEARING

Kristin Cooper, Esq.

VOPA attorneys won a due process hearing where a high school student with mental retardation and oral motor apraxia was denied his civil rights under the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act.

The school system initially filed the due process case against the student and his parents before a scheduled IEP meeting had been completed. The school sought to force the parents to sign a "proposed IEP" through the use of due process. Neither the parents nor VOPA thought that the "proposed IEP" met the student's needs. A five-day trial resulted in victory for the student and his parents. The hearing officer found that the civil rights of the student had been severely violated by the school system.

The student is not deaf; but communicates primarily through the use of American Sign Language and Signed English. His speech is severely impaired due to oral apraxia. The school system consistently denied the student the use of a qualified, screened interpreter in order to communicate expressively with his teachers and peers at school.

The hearing officer found that the student had been denied a Free Appropriate Public Education (FAPE) under both the IDEA and Section 504. She ordered the school system to provide the student with a VQAS Level III Sign Language Interpreter or SLI with qualifications superior to a VQAS Level III Interpreter, at all times, in school. She also ordered that the school provide direct occupational therapy services to the student. She ordered that the school reconvene further IEP meet-

ings to adequately plan for the student's transition. Additionally, she ordered that the school system conduct an Assistive Technology evaluation, and ordered that an independent vocational evaluation be provided for consideration in transitional planning.

This case is the first case in Virginia in which a student with mental retardation and oral motor apraxia, who is not deaf, won the right to a VQAS Level III Sign Language Interpreter.

The hearing officer wrote a 53-page decision, which is available in redacted form on the Virginia Department of Education's website at www.pen.k12.va.us/VDOE/dueproc/HearingOfficerDecisions. The case number is 03-087.

SPEAKERS BUREAU

Sherry Confer, Policy Director

The Virginia Office for Protection and Advocacy (VOPA) has established a Speakers Bureau.

VOPA staff can be available to provide presentations and/or training sessions on disability-related rights issues that are addressed under our current goals and focus areas. VOPA can also provide exhibit materials for fairs, conferences, etc.

Please contact us at 1-800-552-3962 or via e-mail at general_vopa@dsa.state.va.us to request a speaker or materials.

TRANSITION SERVICES

Hilary Malawer, Esq.

Transition from high-school to the "real world" is a critical period for young adults with disabilities. The Individuals with Disabilities Education Act (IDEA) and the Virginia Special Education Regulations provide specific mandates for children 14 and older (beginning younger if appropriate) in this realm of transition.

Importantly, at age sixteen, or younger if appropriate, special education students must have a transition plan based on their individual preferences and interests. Appropriate transition services include a functional vocational evaluation (FVE) and interagency involvement (such as the involvement of DRS). Both these aspects of transition services are specifically stated within the applicable law.

VOPA conducted a transition Listening Tour. The goal of this tour, comprised of numerous presentations, was two-fold. The first objective was to provide information to parents, educators, and consumers about school-to-work transition, including *Virginia special education transition law and benefits planning*. The second objective was to attain information from parents of students with disabilities and students with disabilities themselves regarding transition needs.

Regarding benefits planners, we explained within the presentation who benefits planners are and what they do. Benefits planners provide information to SSI and SSDI recipients about exactly

Continued on page 6

REACHING OUT TO SOUTHWEST VIRGINIA

Steven Traubert, Esq.

The Virginia Office for Protection and Advocacy has been working to establish and strengthen relationships with individuals with disabilities, advocates, and agencies in southwest Virginia through community outreach and training. In November, we were invited to speak at the Richlands Club of the Deaf during their Fall meeting, and took the opportunity to present information about the Americans with Disabilities Act, services provided by VOPA, and, more specifically, our focus area relating to the provision of interpreter services by medical providers to deaf patients. In addition to the presentation, we were able to meet one-on-one with a number of individuals to discuss their cases in greater detail, and establish several contact points within the deaf community, as well as with several interpreters and advocates.

Also in November, VOPA arranged a community training to coincide with the November Board Meeting held in Abingdon. Along with the Highlands Community Services Board and the Appalachian Independence Center, VOPA presented a panel discussion of services available to individuals with disabilities in southwest Virginia, as well as a general overview of the Americans with Disabilities Act and how agencies, advocates, and individuals can work together to best provide services in that part of the state. Attended by a number of individuals with disabilities, advocates, board members, and interested members of the community, the training allowed for some invaluable collaboration with the local residents and agencies on how to best serve the needs of a rural and geographically dispersed part of the State.

Following the conclusion of the

training, VOPA and its Governing Board held a public reception to give the Southwest community an opportunity to meet staff and Board members, as well as staff from the Highlands Community Services Board, and the Appalachian Independence Center, who assisted with the event.

In addition to the excellent networking and information sharing that occurred at these events, they also directly resulted in locating clients on behalf of whom VOPA will advocate for specific relief in the coming year. With the community and agencies better aware of the services provided, VOPA hopes to provide further assistance to clients in southwest Virginia in the future.



VOPA Governing Board members, Okpil Kim (left) and Barbara Barrett (right) learn about resources available to people with disabilities and their advocates.



Individuals with disabilities, their advocates, and members of the community who are interested in or affected by issues relating to disability law attend the training in Abingdon.





VOPA Governing Board members Dink Shackleford (front), Okpil Kim (left), and Barbara Barrett, Chair - at the ready - to welcome visitors to the reception.



VOPA Board member, Okpil Kim (right) and VOPA Executive Director, Colleen Miller (middle), welcome the Mayor of the Town of Abingdon, Lois Humphreys.



VOPA Staff Attorney, Steven Traubert, greets VOPA Board member, Dink Shackleford.



Highlands Community Services Board Executive Director, Hunter Widener, and his staff present at the training and enjoy the reception.



Left-hand photo

VOPA Governing Board Vice-Chair, Maureen Hollowell (right) and VOPA Policy Director, Sherry Confer, chat.

Right-hand photo

Mayor Humphreys (second from left), and VOPA Board members (from left), Okpil Kim, Waja Grimm and Barbara Barrett network.

TRANSITION SERVICES con't.
from page 3

what will happen to their Social Security check and health care coverage if they go to work. It is very important to ensure that school personnel, students with disabilities and their families have accurate information about what will happen to disability benefits and health care upon going to work because, currently,

damaging myths exist about this issue. An example of one of these myths is: If a person receiving benefits goes to work, they will immediately lose both their benefits and their health care. This is generally not true! Many students are discouraged from going to work because of such misinformation. Benefits planners can ensure that an individual with a disability understands what actually will occur when he or she goes to work, thus ensuring that deci-

sions are based on valid information, not on myths.

To date, we have held four Listening Tour sessions throughout Virginia, one in Warsaw, one in Richmond, one in Roanoke, and one in Fairfax.

Overall, VOPA hopes to educate about transition rights in the Commonwealth while learning about transition needs.

WELCOME FROM THE VIRGINIA DD NETWORK

"Congress finds that disability is a natural part of the human experience that does not diminish the right of individuals with developmental disabilities to live independently, to exert control and choice over their own lives, and to fully participate in and contribute to their communities through full integration and inclusion in the economic, political, social, cultural, and education mainstream of United States society."

That is the first sentence of Public Law 106-402, better known as the Developmental Disabilities Assistance and Bill of Rights Act of 2000. The purpose of the DD Act is to assure that individuals with developmental disabilities and their families "participate in the design of and have access to...community services [and] individualized supports...." To accomplish this goal, three different entities were authorized – State Councils on Developmental Disabilities, Protection and Advocacy Systems, and University Centers of Excellence in Developmental Disabilities Education, Research, and Service.

Like other states, Virginia has one of each. The Virginia Board for People with Disabilities (VBPD) is our DD Council, the

Virginia Office for Protection and Advocacy (VOPA) is our "P&A" system, and the Partnership for People with Disabilities (PPD), at Virginia Commonwealth University, is our University Center for Excellence. Each has a different focus and organizational structure. Together, however, we are the Virginia DD Network. The three of us who direct these agencies are committed to working collaboratively on critical issues that affect Virginians with disabilities and their families.

In the past, the three agencies have worked on such initiatives as improving special education experiences and training professionals to prevent maltreatment of individuals with disabilities.

We continue to meet regularly to discuss major initiatives, such as the Olmstead process, and we are planning to determine future direction. Writing a joint column for one another's newsletters is one step in this collaborative process. In subsequent issues, we will be discussing matters that we believe are important to advancing our missions.

In the meantime, we encourage you to visit our websites for more information on our activities:

PPD – www.vcu.edu/partnership

VBPD – www.vaboard.org

VOPA – www.vopa.state.va.us

Cordially,

Fred Orelove, Executive Director,
Partnership for People with Disabilities

Heidi Lawyer, Director, Virginia
Board for People with Disabilities

Colleen Miller, Executive Director,
Virginia Office for Protection and Advocacy

GOALS AND FOCUS AREAS OCTOBER 1, 2003 – SEPTEMBER 30, 2004

The Virginia Office for Protection and Advocacy (VOPA) is dedicated to being an effective advocate for persons with disabilities. The Office operates under the authority of federal and state statutes. Pursuant to those statutes, all callers to the Office will receive some level of service. In many cases, callers receive information and referral services. However, many callers will not receive case-level representation.

Recognizing that it does not operate with unlimited resources, the Office has selected specific areas in which to focus its work. The areas have been selected after extensive public input and guidance from its two advisory councils, and with the approval of its Board of Directors. The selection of these focus areas is not meant to suggest that other issues are not important.

Goal: People with Disabilities are Free from Abuse and Neglect

Focus Area #1: Inappropriate Medication in Mental Retardation and Mental Health Institutions

Focus Area #2: Staff on Resident Assaults in State Mental Retardation and Mental Health Institutions

Focus Area #3: Abuse and Neglect in Community Settings

Focus Area #4: Inappropriate Restraint Use in Juvenile Detention Facilities and Schools

Focus Area #5: Deaths Where There is Probable Cause to Believe Abuse or Neglect Occurred

Goal: Children and Youth with Disabilities Receive an Appropriate Education

Focus Area #1: Transition Ser-

vices for Children Age 14 and Above

Focus Area #2: Children Placed in Interim Alternative Educational Placements Due to Disability

Focus Area #3: Assistive Technology and Supports in Public Education

Focus Area #4: Technical Assistance to Private Bar, Legal Services Agencies, and Parent Advocacy Groups Regarding Changes in the Individuals with Disabilities Education Act (IDEA)

Focus Area #5: Best Practices in Education about Traumatic Brain Injury (TBI)

Goal: People with Disabilities Have Equal Access to Government Services

Focus Area #1: Accessible Commercial Locations under Contract with the State

Focus Area #2: Law Enforcement Agencies Recognize the Needs of Persons with Disabilities

Focus Area #3: Polling Places for People with Disabilities

Focus Area #4: Accessible Sidewalks

Focus Area #5: Failure to provide appropriate TBI-related supports and therapies for persons who have a dual diagnosis of Mental Retardation/Developmental Disabilities (MR/DD) and TBI or of Mental Illness (MI) and TBI.

Goal: People with Disabilities Live in the Most Integrated Environment Possible

Focus Area #1: Service Animals in Public Accommodations

Focus Area #2: Appropriate Services and Supports to Enable People to Move into the Community

Focus Area #3: Appropriate and Timely Discharge Plans at Mental Health Facilities

Focus Area #4: Appropriate Assessment and Use of Assistive Technology in State-Run Institutions

Focus Area #5: Appropriate Staffing at State Residential Facilities

Goal: People with Disabilities are Employed to their Maximum Potential

Focus Area #1: Barriers to Work for Social Security Beneficiaries Due to Improper Services or Inadequate Information

Focus Area #2: Acquisition of Assistive Technology for Persons with Disabilities by the Department of Rehabilitative Services, Department for the Blind and Vision Impaired, and the Department for the Deaf and Hard of Hearing

Focus Area #3: Supported Employment

Focus Area #4: Social Security Redetermination Decisions that are a Barrier to Employment

Focus Area #5: Maximized Employment for Vocational Rehabilitation Clients who are Difficult to Serve

Goal: People with Disabilities have Equal Access to Appropriate and Necessary Health Care

Focus Area #1: Sign Language Interpreters in Medical Professional Offices

Focus Area #2: Assistive Technology Obtained through Medicaid and Other Insurances

Focus Area #3: Retention of Benefits through 1619(b) and Medicaid Buy-In

Focus Area #4: Access to Psychiatric Medications in County and Municipal Jails

Focus Area #5: Traumatic Brain Injury Waiver

Continued on page 8

GOALS AND FOCUS AREAS con't.
from page 7

Goal: *People with Disabilities in the Commonwealth of Virginia are Aware of VOPA's Services*

Focus Area #1: Underserved Communities

Focus Area #2: Developmental Disability Facilities

Focus Area #3: Juvenile Detention Facilities

Focus Area #4: CAP Services at Independent Living Centers

Focus Area #5: Social Security Beneficiaries

Focus Area #6: Spanish-Speaking Constituents

Focus Area #7: Adult Care Homes (Assisted Living Facilities)

Focus Area #8: Traumatic Brain Injury

For more information on our goals, focus areas and objectives, see our website at www.vopa.state.va.us.

Youth Leadership Forum

It's that time again! The 2003 Youth Leadership Forum (YLF) was a resounding success. Our Delegates all did a wonderful job, gaining new skills in leadership, new friends, and a renewed commitment to improving their communities and advancing their dreams. We are now beginning the recruitment for next year's YLF.

For those of you unfamiliar with this flagship program sponsored by the Virginia Board for People with Disabilities (VBPD), the YLF is a unique leadership training opportunity for high school students with disabilities who are interested in further developing their leadership skills. All rising high school juniors and seniors who live in Virginia, have a disability and are actively involved in their school and/or community are encouraged to apply.

Students selected to attend the forum are called Delegates. The YLF provides Delegates with opportunities for learning, sharing, and developing skills to enhance their leadership potential at school, at work, in their communities and over their own lives. All costs including personal care attendants, sign language interpreters, other reasonable accommodations, and room & board are covered by the VBPD.

In order to be eligible for the 2004 YLF, which will take place **July 19 - 23, 2004** at Christopher Newport University in Newport News, a completed application must be received by **5:00 p.m. on February 27, 2004**.

A YLF student application as well as additional YLF information can be found on the VBPD website, www.vaboard.org, click on forms to download an application.

If you have questions or need additional information contact Teri Barker or Jennifer Peers with the Virginia Board for People with Disabilities at 786-0016 or at 1-800-846-4464 (voice/TTY). Please feel free to distribute this information to friends, family members, schools, job sites—to anyone who may be interested in this wonderful opportunity.

WE'RE MOVING!

The Virginia Office for Protection and Advocacy's Central Office in Richmond will be moving to new office space mid-February.

The new address will be 1910 Byrd Avenue, Suite 5, Richmond, Virginia 23230.

At this time, VOPA has not been assigned its new telephone numbers.

Additional information will be distributed to interested parties as we get closer to the move date.

It is very likely that we will not be available to take telephone calls on Thursday, February 12 and Friday, February 13, although staff will periodically, throughout those two days, be checking voice mail. The following Monday, February 16, is a state holiday.

Therefore, we will not officially reopen, at our new facility, until Tuesday, February 17, 2004.

Please bear with us as we prepare and proceed with this significant event!



202 N. Ninth St., 9th Floor
Richmond, VA 23219



VOPA

Virginia's Protection and
Advocacy System Serving
Persons with Disabilities

Commonwealth of Virginia
Virginia Office for Protection
and Advocacy

We're on the Web!
www.vopa.state.va.us

INSIDE THIS ISSUE

Message from the Executive Director	1
General Assembly 2004	1
VOPA Reorganization	2
Danville-Pittsylvania Community Services Dismisses its Own Lawsuit	
VOPA has Issued a Report Finding Neglect	2
VOPA Wins Civil Rights Victory at Due Process Hearing	3
Speakers Bureau	3
Transition Services	3
Reaching Out to Southwest Virginia	4
Goals and Focus Areas	
October 1, 2003 - September 30, 2004	6
Youth Leadership Forum	8
We're Moving!	8